Supreme Court, U.S.
AUG 1 6 1993
OFFICE OF THE CLERK

93-246

No___

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1993

Albert Rupp, et al.,
Petitioner

v.

County of San Diego, et al.,
Respondent.

# PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES SUPREME COURT

**Petitioners:**
**In Propria Persona**

Albert Rupp
Rita Rupp
John Rupp
3131 Central Ave
Spring Valley Ca. 91977
(619) 463-0955

## QUESTION PRESENTED

1. Are the Federal rules of evidence a proper forum for Federal civil rights claims in State courts?

2. Can the State Court use state rules of evidence on Federal civil rights claim in State courts?

3. Whether application of the State rules burdens the "Civil Rights" victims who seek redress in state courts to comply with a requirement that is entirely absent from civil rights litigation in federal courts?

4. Do the State rules of evidence Prejudice Federal Civil Rights litigants in State court.

5. Whether a fair trial and due process rights are violated by ineffective assistance of counsel and whether civil trial litigants have the right to effective assistance of counsel.

## PARTIES TO THE PROCEEDING

The parties to the proceeding in the Appellant Court of the Fourth Appellant District division 1 of San Diego California, are those in the caption (Case No. D014098) as well as Rita Rupp, and John Rupp Appellants.

## TABLE OF CONTENTS


| | Page |
|---|---|
| QUESTION PRESENTED | i |
| PARTIES TO THE PROCEEDING | i |
| TABLE OF AUTHORITIES | iv |
| OPINIONS BELOW | 1 |
| BASIS FOR JURISDICTION | 1 |
| CONSTITUTION, STATUTES AND MISCELLANEOUS PROVISIONS INVOLVED | 2 |
| STATEMENT OF THE CASE | 3 |
| REASONS FOR GRANTING THE WRIT | 7 |
| **I. THIS CASE PRESENTS IMPORTANT QUESTIONS OF LAW TO WHICH, THE FEDERAL RULES OF CIVIL PROCEDURE SHOULD PREEMPT THE LOCAL RULES OF A STATE COURT ESPECIALLY WHEN FEDERAL CONSTITUTIONAL ISSUES ARE INVOLVED** | **10** |
| **II. THE CALIFORNIA SUPREME COURT DECISIONS ARE STILL UNDECIDED ON FEDERAL PROCEDURES IN STATE COURTS** | **10** |

Page

**III. ARE THE APPELLANTS PRECLUDED FROM A FAIR STATE COURT TRIAL BECAUSE OF INADEQUATE COUNSEL..... 14**

IV. CONCLUSION
..... 17

APPENDICES:

A: OPINION OF THE STATE COURTS
B: ORDER OF FACTUAL INNOCENCE
C: STATE CLAIMS NOTICE

# TABLE OF AUTHORITIES


| | Page |
|---|---|
| Abbleman v. Booth 21 How. 506 | 11 |
| Brown v. Western R of Alabama 338 U.S. 294 | 12 |
| Betts v. Brady, (1942) 316 U.S. 455 | 15 |
| Chapman V. Houston Welfare Ringts Org. 411 U. S. 600 | 1 |
| Chesapeake & Ohio R. Co. v. Kuhn 284 U.S. 44 | 9 |
| Cohens v. Virginia 6 Wheat. 414 | 12 |
| Davee v. Southern Pac. Co. 58 Cal. 2d. 572 | 13 |
| Dice v. Adron, C.& Y. R. Co. (1951) 342 U.S. 359 | 8 |
| Gideon v. Wainwright (1963) 372 U.S. 335 | 15 |
| Felder v. Casey 487 U.S. 130 | 8 |
| McCulloch v. Maryland 4 Wheat 316 | 12 |

Minnisota & St. Louis R.R. v. Bombolis
241 U.S. 211..... 11

Norfolk & C. R.R. v. Ferebee
239 U. S. 269..... 13

Powell v. Alabama
(1932) 287 U.S. 45..... 15

Williams v. Horvath
16 Cal. 3d 834 ..... 10

Page

**Constitution, Statutes**

U. S. Const. Amend. VI..... 11

U. S. Const. Amend. XIV ..... 11

28 U.S.C. sec. 1257..... 3

42 U.S.C. sec. 1983 ..... 8

**Miscellaneous**

Cal. State Rules of Evidence Code 352..... 6

No.____

---

In The

**SUPREME COURT OF THE UNITED STATES**

October Term, 1993

---

Albert Rupp et al.,
Petitioners

v.

County of San Diego et al.,
Respondents

---

**PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES SUPREME COURT**

---

Petitioners herein respectfully pray that a writ of certiorari issue to review the judgment and opinion of the State of California Supreme Court entered in this action on May 19, 1993

## OPINIONS BELOW

The decision of the San Diego superior court , is case No. 558340 The decision of the San Diego Court of Appeals for the Fourth Appellate District is reported in a non-published opinion in case No. D-014098 on March 1, 1993 . The Petition for Review, was denied, by a decision of the Justices - en banc - with Judge Lucas, acting as Chief Justice, inside the Supreme Court in the State of California, on May 19 , 1993. Therefore, the only written opinion expressed by the Justices en banc of the Supreme Court of the State of California are recorded in case No. S-032162 .

## BASIS FOR JURISDICTION

The final judgment of the California State Supreme Court was entered on May 19th 1993 . This court has jurisdiction to review judgment by the highest state supreme court pursuant to Title 28 U.S.C. sec. 1258, 28 U.S.C. sec. 1343(3) , 42 U.S.C. sec. 1983, and Chapman v. Houston Welfare Rights Org. 441 U.S. 600.

## CONSTITUTIONAL STATUTORY, AND REGULATORY PROVISIONS INVOLVED

United States Constitution, Amendment IV.

This case involves the Fourteenth Amendment to the Constitution of the United States.

This case also involves 42 U.S.C. sec. 1983 which states:

> "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any state or territory subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof, to the Deprivation of any rights privileges, or immunities secured by the constitution and laws shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

This case also involves 28 U.S.C. sec. 1334(3) which states:

> (3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States.

This case also involves 28 U.S.C. 1257 which states as follows:

> (a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title,right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

## STATEMENT OF CASE

In the beginning... Richard Ziepke working officially as a Deputy Sheriff for the County of San Diego responded to a call by two Federal forest Rangers Edwin Heinrich and Ivan Bartonichek on April 6th 1985. None of these officers understood how to deal with the Rupp Family properly on the April 6th 1985 in Mountains near Pine Valley nor the

April 10, 1985 incident at the residence of the Rupp family. By the failed attempt to cure the problem, the officers intensified and furthered terrorist tactics to try and resolve a misunderstood problem. As a result... of mishandling that incident ,the Rupp family filed a Civil rights complaint in Federal Court, which was later resolved in favor of the Rupp family by an award of a 40,000.00 dollar settlement by the county of San Diego before the Honorable Federal Magistrate Judge McCue, for the April 6th 1985 incident on approximately May 1st 1990.

Four days after the April 6th incident the S.E.D. swat team, Richard Ziepke, and Norm Watson made an entry in the Rupp's residence at 3131 Central Ave, Spring Valley Ca, in another failed attempt to extend their terrorism to the Rupp family on April 10th 1985. As a result of that incident the Plaintiff's filed a claims notice with the County Administrative building on July 1st, 1985, which was rejected on 11 -14 - 1985. Then Plaintiff's filed a civil rights complaint for liable and punitive damages, against the County of San Diego, in the superior court, County of San Diego in the State of California, on February 13th

1986...contending that the defendants are not immune from title 42 sec. 1983 liability. In this civil rights claim ,the Plaintiff's declared that they suffered assault and battery, excessive force, false arrest, negligence, intentional infliction of emotional distress, negligent employment and retention and civil conspiracy by defendants, those defendants accused were and are employees of the County of San Diego. In addition California State Torts claim act, recognized some of these federal civil rights claims except for Judge Jeffery T. Miller in the Superior Court.

The Plaintiff's demanded a Jury trial that lasted for eight days in the Superior Court of the County of San Diego, from November 26th to November 29, 1990 and December 3rd to December 6th ,1990, before the Honorable Jeffery T Miller. During this trial Judge Miller ruled on specific motion by the Plaintiff's and Defendant's . Erroneously Judge Miller operated on the presumption that the Plaintiff's never filed a state claims notice with the county, when in fact they did, (see Appendix " C" ). Furthermore the Defendants 4th motion in limine was granted by Judge

Miller , based upon the Misinformed idea, that Plaintiff's did not filed proper claims according to State of California Torts claim act, nevertheless the Court still recognized some Federal claims according to the Federal civil rights act, in state courts.

In conclusion the jury after the trial, found favor for the defendants and awarded no monetary damages to plaintiff's. Plaintiff's then appealed to the Court of Appeal, Fourth Appellate District, Division one. The Appeals Court simply parroted what ever the defendants claimed in the 25 page report by the county, in addition the court went on further to say in their ruling on March 1, 1993 that each and every time a search is determined to be unlawful, the person searched is not automatically entitled to a civil rights claim under 42 U.S.C. sec. 1983, and that defendant is entitled to qualified immunity based on objectively reasonable conduct.

The Plaintiff's Petitioned for Review in the Supreme Court of the State of California on April 7, 1993. The State Supreme Court denied the Petition for Review on May 19, 1993. The Plaintiff's then Petition to this Court for a Writ of Certiorari.

## REASONS FOR GRANTING THE WRIT

### I.

### THIS CASE PRESENTS IMPORTANT QUESTIONS OF LAW TO WHICH, THE FEDERAL RULES OF CIVIL PROCEDURE SHOULD PREEMPT, THE LOCAL RULES OF A STATE COURT, ESPECIALLY WHEN FEDERAL CONSTITUTIONAL ISSUES ARE INVOLVED.

One out of the many question we present below are valid question that we believe have merit to our original Federal claim...

1. Whether the state rules of evidence are sufficient to answer federal rights, claims, or evidence?... or for that matter, the right to call a witness according to federal rules of evidence.

2. Was it to prejudicial for Judge Miller to utilize a State court rule 352 by discretion, to decide a Federal Civil Rights case in State Court?

3. May a State Court utilize sufficiency the Federal rules of Evidence, before a State Court ?

As you know, the rules of evidence can be the whole purview of a Plaintiff's case, when before a Jury trial. A

Judges discretion to rule on what evidence gets through and which does not, will make or break a case, and for those reasons alone, the most important questions presented here are before this court awaiting its resolve.

In a restrictive sense, the United States Supreme Court has ruled on particular Issues concerning Federal Law in state courts. Most of these cases only targeted the relationship between Federal Claims and substantive Federal Rights. Davis v. Wechsler, 263 U.S. 22, and Dice v. Akron 342 U.S. 359, Felder v. Casey. 487 U.S. 130. Brown v. Western R. Co. of Alabama 338 U.S. 298. In addition to Felder the Court reasoned that the general rule of control to state judicial procedure is: " that federal law takes the state courts as it finds them" Brief for Amice Curiae 8 (quoting Hart), The relations between State and Federal law, 54 Colum.L.Rev. 489 508 (1954).

Whether the court intends on expanding this " **Federal view** " to the State rules of evidence remains in the sound judgment of the Justices. This Court ruled previously in Bock Laundry Machine Co. that it would be unacceptable

to require the weighing of prejudice to civil defendants, while requiring the automatic admissibility of prior felony convictions detrimental to civil plaintiffs. By the example Illustrated in the Rupp case; Ziepkie a deputy Sheriff allegedly heard from a State game warden, " that if Mr. Rupp ever saw a game warden he would shoot him in the back " which was not true. More over, Plaintiff's had several witnesses on standby to oppose the hearsay statements which was denied. Nevertheless this very prejudicial evidence was allowed in the record according to the so called State rules of evidence not Federal rules of evidence.

The interstitial nature of federal law must take State courts as it finds them specifically for those States who recognize and model federal Claims in their State Torts Claim Act. Moreover, any Plaintiff seeking remedy in such a forum would suffer the constant traversing of State procedures, Federal rules of civil procedure and federal common law case rules all in the same **MIX** ... virtually frustrating even the most well intended State superior court Judge.

## II.

## THE CALIFORNIA SUPREME COURT DECISIONS ARE STILL UNDECIDED ON FEDERAL PROCEDURES IN STATE COURTS.

A. The California Superior court erred by allowing the State rules of evidence to be litigated in a Federal civil rights action.

State Courts are concurrent in nature with the Federal constitution, otherwise the United States Supreme Court could not be the last reviewing court for this type of case. Nevertheless... our California Supreme Court has recently stated that " the purposes underlying ( a federal statute).... must still be served, and may not be frustrated by state substantive limitations couched in procedural language, Williams v. Horvath, 16 Cal.3d 834, 841. Moreover Williams was an action under the federal Civil Rights Act (42 U.S.C.A. SS 1983), our Supreme Court, in announcing the aforementioned principle, extended this view to FELA authorities in this quote " much of the law on the question of the extent state procedure may be applied to federal question of the state court has arisen in the context of the Federal Employers Liability Act.(16 Cal.3d at P. 841, fn. 3) State

enforcement of Federally created Rights (1960) 73 Harv.L.Rev. 1551.

As reasoned in the Bombolis case, on page 213... A state court can derive no authority from the power which creates it to adjudicate controversies based upon the Federal act. Abbleman v. Booth, 21 How. 506; Levin v. United States, 128 Fed. Rep. 826. By what Power then... can a State Court derive its authority, to consider the selection of rules that would standardize the body of evidence in a Federal Claim? The United States Supreme court answered this question in limited terms Minn. & ST. Louis R.R. v. Bombolis 241 U.S. 211... However even when Plaintiff's in a State Court , like in the Rupp case, who have survived any and all threshold requirements for a trial... will find during trial something awkward happens every time.

It is in this awkward posture, that we question just what authority a State Court Judge may exorcize, by the Appellant who files his State Claims for a tort action which the Honorable Jeffery T. Miller denied... not because it was filed late or that the county denied the claims but because

Judge Miller did not know how to litigate those claims in his court. Nevertheless Judge Miller, should have barred the Defendants to use local rules for the purposes of affecting or altering the substantive rights of the Plaintiff, under federal law, in other words... Plaintiff's federal right should not be defeated, by forms of local practice Brown v. Western R. of Alabama, 338 U.S. 294, 296. It's was by this complication, that led counsel to argue the Federal civil rights claims, in Plaintiff's complaint. Moreover, Federal Claims, are Acts of Congress that the State of California have recognized for years, and this Concurrent Jurisdiction allowing such claims to go before a State Court prevents Plaintiff's substantive rights or Defence from being defeated. As emphasized, by the sound reasoning in Bombolis, the court stated the follows on page 214:

> State courts in deciding controversies founded upon this act are applying the judicial power of the United States, and if it be held that the Seventh Amendment is a limitation only upon that power,state courts could not enforce such power apart from the limitation of the said amendment. McCulloch v. Maryland 4 Wheat. 316; Cohens v. Virginia 6 Wheat. 414.

And concluded the following on page 215 as follows:

> A substantive right or defense arising under the Federal law cannot be lessened or destroyed by a rule of procedure. Norfolk &c. R.R. v. Ferebee, 238 U.S. 269. Nor can a right protected by the Constitution of the United States be lessened or destroyed by a state court, under the guise of procedure.

When Appellants extend this same reasoning by Bombolis to State courts, the most one can expect is maybe a jury trial, unless the Plaintiff is filing for an F.E.L.A. action. At what point are these cases so different, that the rights of an Appellant could not have the same substantive rights of a section 1983 claim as those who file for a F.E.L.A. action.

This is especially true when a state Court allows prejudicial evidence to be part of the record based upon the California Evidence Code section 352, that a federal court would rule as inadmissible. As stated in-addition to this line of reasoning in Davee v. Southern Pac. C., 58 Cal. 2d 572, 576 the court concludes by saying :

And therefore , its admissibility was governed by federal law (which rendered it inadmissible) id.

The proffered evidence that the state court admitted into the record was inadmissible, in-contradistinction to the Federal standard according to the line of cases in F.E.L.A. actions, which are acts of congress just 42 sec. 1983 are acts of congess.

In a short summation, the Miscarriage of Justice in this case can be summed up as follows

1. Judge Miller only allows prejudicial evidence that Ziepke and other officers of the county alleges against the Rupp family.

2. However Judge Miller denies any and all pro-offered evidence or witness which may defeat the alleged statements by Richard Zepkei or other officers of the County.

No further need of additional examples by the Appellants, at this point the jury verdict is 100% predictable.

## III.

## ARE THE APPELLANTS PRECLUDED FROM A FAIR STATE COURT TRIAL BECAUSE OF INADEQUATE COUNSEL?

A. Do Plantiff's have a 6th and 14 amendment due process, that would afford them the same equal protections for criminal litigants as well as civil litigants?

Our position by statement is that the Appellant do, herein have the right to effective assistance of counsel. The right to counsel embodied in the 6th amendment must be given the same Due as a criminal defendant would have, and to deny this to an Appellant would be an inequity of law for those who are in a criminal vs. civil process.

The Plaintiff's suffered ineffective assistance of counsel, during the trial. Appellants do identify one major flaw by counsel and that is his practice of law was state not federal. Even in Counsels last minute attempt to learn how to litigate federal law in a State court proved to a fatal result for Appellants. In addition... trial attorney's ineffectiveness to object to key evidence, only furthered the complications for future correction, once formally in a State Court . The right to Counsel was outlined in Gideon v. Waninwright (1963) 372 U.S. 355 for criminal cases, for State Powell v. Alabama 287 U.S. 45 (1932). Additionally Betts v. Brady 316 U.S. 455 (1942) was incorporated for due process and fundamental fairness. This is the law operating currently in the justice system today.

For those seeking an extension of the law... for the purposes of equal protection during a civil trial proceeding, is like stepping into a new territory of uncertain and undefined rights that Appellants have suffered Substantially. Moreover, Appellants respectfully urge the request for court to review the on going construction and growth of this federally created territory that the Appellants have found themselves in, with no apparent remedy. These issues will be more fully explored when and if Certiorari is granted.

## CONCLUSION

For all the foregoing reasons, we faithfully urge that this petition for a writ of certiorari should be granted.

Dated: 8/12/93

As submitted,

Albert Rupp
ALBERT RUPP

Rita Rupp
RITA RUPP

John Rupp
JOHN RUPP

Fourth Appellate District, Division One, No. D014098
S032162

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

# IN BANK

---

**SUPREME COURT**
**FILED**
**MAY 19, 1993**
**Robert Wandruff Clerk**

DEPUTY

ALBERT RUPP Et Al. , Appellants

v.

COUNTY OF SAN DIEGO Et Al . , Respondents

---

APPELLANTS' petition for review DENIED

LUCAS

Chief Justice

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

| | | |
|---|---|---|
| ALBERT RUPP et al., | ) | |
| | ) | |
| Plaintiffs and Appellants, | ) | |
| | ) | |
| v. | ) | D014098 |
| | ) | |
| COUNTY OF SAN DIEGO et al., | ) | |
| | ) | |
| Defendants and Respondents. | ) | (Super. Ct. No. 558340) |
| | ) | |

---

APPEAL from a judgment of the Superior Court of San Diego County, Jeffery T. Miller, Judge. Affirmed.

Albert, Rita and John Rupp ( the Rupps) appeal from a judgment after a jury found San Diego County Deputy Sheriff Richard Ziepke (Ziepke) was not liable for alleged tortious conduct in a search of the Rupps' home. The Rupps claimed Ziepke battered and falsely imprisoned them, inflicted emotional distress and violated their constitutional rights.

On appeal, the Rupps contend the trial should have been limited to the determination of their damages because liability was previously established by the Rupps' successful motion to suppress evidence in criminal proceedings against them. ( Pen. Code, S 1538.5.) The Rupps also contend the court improperly admitted hearsay evidence on Ziepke's ill-health. We Affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On April 6, 1985, two unarmed forest rangers reported they were threatened and assaulted by three men with high-powered weapons in a wilderness area near Pine Valley. The rangers retreated and requested assistance from sheriff's deputies helicopter units . Upon arrival at the scene, sheriff's deputies believed the armed men planned an ambush, based on the men's actions and positions. After a physical confrontation, Albert, John and Jim Rupp were taken into custody. 1 Ziepke and Sergeant

---

1 Albert and Rita Rupp are the parents of John and Jim Rupp. Although Jim and other family members were parties to the civil suit, only Albert, Rita and John Rupp appeal.

Norman Watson were among the arresting officers. The Rupps were charged with a variety of criminal offenses, including assault with a deadly weapon and possession of armor-piercing ammunition during the commission of a felony.

Ziepke executed a nine-page affidavit in support of a warrant to search the Rupp home. In his affidavit, Ziepke stated he believed the Rupps were skilled in para-military tactical maneuvers, based on the April 6 events. Ziepke also related a fish and game warden had knowledge Albert Rupp photographed wardens and was conducting a " secret investigation " of game personnel. Ziepke sought a warrant to seize the photographs, firearms, ammunition and writings describing military tactics and " anti-personnel " actions.

The magistrate signed the warrant and the Sheriff's Department Special Enforcement Detail ("SED") conducted a "high risk warrant service" of the Rupp home on April 10. After ramming the door, the SED deputies handcuffed Albert, Rita and John Rupp for a number of minutes and secured the premises. Ziepke and Watson entered the home and Ziepke conducted the search.

Albert and John Rupp were bound over on the criminal charges (CR 77210) and successfully moves to suppress the evidence seized in the search. The court found there was insufficient probable cause for the warrant and the magistrate did not properly review the affidavit. Albert and John Rupp were convicted of disturbing the peace.

The Rupps filed this action for damages against the County of San Diego, Sheriff John Duffy and Ziepke, alleging causes of action for assault and battery, violation of civil rights under the United States and California Constitutions, intentional and negligent infliction of emotional distress and civil conspiracy. All the alleged acts arose from the April 10 search. By special verdict, a jury found Ziepke not liable on all causes of action.2

DISCUSSION

I. The lack of Probable Cause

The Rupps contend the doctrine of collateral estoppel should have limited the trial solely to the determination of damages, at least

---

2. Apparently Ziepke was the sole remaining defendant by the time of trial.

for the civil rights cause of action, because of the finding of no probable cause. The Rupps claim the court allowed Ziepke to argue he had probable cause for the search.

Each and every time a search is determined to be unlawful, the person searches is not automatically entitled to a civil action for a deprivation of rights under 42 United States Code section 1983. (Bowens v. Knazze (1965) 237 F. Supp. 826, 827-828.) A law enforcement officer conducting a search in violation of the Fourth Amendment may be immune from personal liability if it is found that a reasonable officer could have believed the search to be lawful in light of clearly established law and the information possessed by the searching officer. ( Anderson v. Creighton )(1987) 483 U.S. 635, 638-641.) Good faith is an affirmative defense in a suit for a deprivation of civil rights and must be asserted by the officer claiming it. (Peraza v. Delameter (1984 722 F. 2d 1455, 1457

Here the record shows the court properly limited Ziepke to showing he was entitled to qualified immunity based on objectively reasonable conduct. There is nothing in this record to suggest the court in the criminal proceeding made any finding Ziepke acted in

bad faith or his conduct was objectively unreasonable. Thus Ziepke was not collaterally estopped from claiming his actions were privileged.

Also the Rupps had the burden of proving the elements of battery, false imprisonment, negligence and intentional infliction of emotional distress. Those causes of action are not subsumed in a deprivation of civil rights claim. Ziepke, therefore, was also properly allowed to present evidence on the circumstances of the April 10 search to undercut the Rupps' claims on those theories of liability.

II. Evidentiary Error

The Game Warden's Report

The Rupps next argue the court improperly admitted hearsay statements in a report by a fish and game warden relating Albert Rupp photographed game wardens as part of Rupp's "secret investigation" in 1984 and Rupp told others he hated game wardens and would shoot them in the back. They complain they were not allowed to call rebuttal witnesses to disprove the warden's report.

The record shows the Rupps did not object to the introduction of the game officer's report. Moreover the report was not offered for the truth of the statements ( that Rupp conducted an investigation of game wardens, was hostile to them and would harm them), but to show the information Ziepke had in preparing his affidavit for the warrant and how he related that information. The court properly admitted the report because it was not hearsay and was relevant to the reasonableness of Ziepke's conduct.

The Rupps do not indicate where in the record they attempted to present rebuttal witnesses and whether they made an offer of proof on what evidence the witnesses would provide. On the record before us, the truthfulness of the warden's report was, at best, collateral to the Rupps' causes of action and would have been properly excluded as confusing the issues or misleading the jury. (Evid. Code, S 352.)

Ziepke's Physical Condition

Ziepke did not testify at trial because he was suffering from terminal brain cancer. His testimony was presented by the reading

of his deposition. Ziepke's attorney in a related action, [3] William Chopak, testified to the length of Ziepke's deposition and the fact Ziepke was seriously ill. The Rupps objected to Chopak's testimony as a "ploy to get ( Ziepke's ) condition out and elicit sympathy before the jury."

The court allowed Chopak to testify in a limited fashion on the facts concerning the deposition but prohibited any opinion testimony on Ziepke's condition. The court correctly reasoned the circumstances of the deposition were relevant to rebut the Rupps' claim Ziepke was evasive in his testimony.

---

3 The Rupps also brought an action in United States District Court against Ziepke stemming from the arrest on April 6.

DISPOSITION

Judgment affirmed

WE CONCUR:

FROEHLICH, J.

TODD, Acting P.J.

NARES, J.

APPENDIX B

IN THE MUNICIPAL COURT, EL CAJON JUDICIAL DISTRICT

COUNTY OF SAN DIEGO, STATE OF CALIFORNIA

| | | |
|---|---|---|
| THE PEOPLE OF THE STATE OF CALIFORNIA, | ) | |
| Plaintiff, | ) | CASE NO. C 48353 |
| | ) | ORDER AFTER HEARING |
| JIM VINCENT RUPP, | ) | |
| Defendant, | ) | |

Defendant's Petition for Finding of Factual Inocence is granted.

DATED: April 18, 1986

Victor E. Bianchini
Judge of the Municipal Court

CLAIM AGAINST THE COUNTY OF SAN DIEGO
(FOR DAMAGES TO PERSONS OR PERSONAL PROPERTY)

CLAIMS DIVISION
JUL 01 1985
County of San Diego
TIME STAMP

File No. 850499 R

Received by .....via
U.S. Mail ☐
Inter-Office Mail ☐
Over The Counter ☐

---

A claim must be filed with the Office Of Employee Services of the County of San Diego within 100 days after which the incident or event occurred. Be sure your claim is against the County of San Diego, not another public entity.. Where space is insufficient, please use additional paper and identify information by paragraph number. Completed claims must be mailed or delivered to: *County of San Diego, Office of Employee Services, 1600 Pacific Highway, San Diego CA,92101, phone 236-3650.*

---

TO THE HONORABLE BOARD OF SUPERVISORS, The County of San Diego, California

The undersigned respectfully submits the following claim and information relative to damage to persons and/or personal property:

1. NAME OF CLAIMANT Rita Rupp

a. address of Claimant 3131 Central Ave. Spring Valley Ca. Zip 92077

b. Phone No. 463-0955 c. Date of Birth 02/15/40

d. Social Security No. _____ e. Driver's Lic.No. _____

2. Name, telephone and post office address to which claimant desires notices to be sent if other than above:
Charles S, Roseman, Esq.,101 W. Broadway
suite 1100, San Diego, Ca, 92101

3. Occurrence or event form which the claim arises:

a. Date 04/10/85 b. Time 2:50 p.m.

c.Place (exact and specific location): 3131 Central Ave.
Spring Valley, Ca 92077

d. Specify the particular occurrence, event, act or omission you claim caused the injury or damage ( use additional paper if necessary): See Exhibit "A" attached hereto and incorporated herein by this reference.

e.State how or wherein the County of San Diego or its employees were at fault. Give the names(s) of the County employee(s) causing the damage or injury See Exhibit "A" attached hereto and in-
-corporated herein by this reference.

4. Give a description of the injury, property damage or loss, so far as is known at the time of this claim. If there were no injuries, state "no injuries".

See Exhibit "A" attached hereto and incor-
-pporated herein by this reference.

5. Name and address of any other person injured:

See Exhibit "A" attached hereto and incor-
porated herein gy this reference.

6. Name and address of the owner of any damaged property: Albert Gerhard Rupp 3131 Central Ave.
Spring Valley, Ca 92077

7.Damages claimed:

a. Amount claimed as of this date: $ 75,000.00
b. Estimated amount of future costs: $Unknown
c. Total amount claimed: $ 75,000.00
d. Basis for computation of amounts claimed ( include copies of all bills, invoices, estimates, etc. ):

e.Damaged vehicle (if applicable): Make_____Model____
Year_____ Vehicle Identification No. (VIN)_____
Mileage_____

8. Names and addresses of all witnesses, hospitals, doctors, etc.

a. See Exhibit "A" attached herto and inc-
b. -orporated herein by this reference.
c.
d.

9. Any additional information that might be helpful in considering

claim: The foregoing information has been provided to the undersigned who represents, based on information and belief, that it is true and correct

**WARNING: IT IS A CRIMINAL OFFENSE TO FILE A FALSE CLAIM! (PENAL CODE S 72; Insurance Code S 556.1)**

Signed this 27th day of June, 1985 at San Diego Ca.

FRANK, ROSEMAN, FREEDUS & MANN

EXHIBIT "A" TO CLAIM AGAINST COUNTY OF SAN DIEGO

Name of Claimant: Rita Rupp

Attachment 3

On or about April 10, 1985, deputy sheriffs of the San Diego County Sheriff Department, including Deputy Sheriff Rich Ziepke, with force and without probable cause, illegally entered the residence of claimant. Thereafter, deputy sheriffs of the County of San Diego illegally searched claimant's residence and seized personal property of the claimant.

On April 10,1985, Judge Michael W. Brennan issued a search warrant for the claimant's residence upon false and misleading information which was provided to Judge Brennan by deputy officers of the County of San Diego Sheriff Department. Such statements were known by the deputy officers to be false and were made with the intent of harassing and disturbing claimant and claimant's family.

Once deputy officers arrived at claimant's residence, the officers failed to first knock and announce their presence, but

immediately broke in the door of claimant's residence and began

searching through claimant's personal belongings and confiscating personal property of the claimant.

As a result of the foregoing, intentional, negligent and wrongful acts by the San Diego County Sheriff Department and officers thereof, claimant suffered severe and debilitating emotional and mental distress, fear and anxiety, personal injuries, and confiscation of his personal property and belongings.

3. e. Claimant is informed and believes, that the County of San Diego Sheriff Department and deputy officers thereof are at fault for the events discussed herein above, because the County of San Diego and the San Diego Sheriff Department knew, or through the exercise of ordinary and/or reasonable care, should have known, that the facts upon which the search warrant was obtained were false and fraudulent and made for the purpose of harassing and/or intimidating the claimant. Despite such knowledge, the County of San Diego and San Diego Sheriff Department allowed the search warrant to be issued and further ordered that deputy sheriffs of the

County of San Diego Sheriff Department illegally enter and search the claimant's residence.

As a result of the conduct of the County of San Diego and the San Diego County Sheriff Department, claimant's federal and California State constitutional rights were violated, and claimant suffered severe emotional and mental distress by virtue of the acts of the County of San Diego and San Diego County Sheriff Department.

4. As a result of the intentional, negligent and wrongful conduct of the County of San Diego and San Diego County Sheriff Department, claimant suffered personal injuries, including, but not limited to, severe emotional and mental distress, humiliation, fear, embarrassment and anxiety, in an amount as yet unascertained.

8.(a) Albert Gerhard Rupp, 3131 Central Avenue, Spring Valley, CA 92077

(b) John Wesley Rupp, 3131 Central Avenue, Spring Valley, CA 92077

(c) Jim Vincent Rupp, 4028 North Bonita, San Diego, CA 92114

(d) Michael Rupp, 4028 North Bonita, San Diego,CA 92114

(e) Lorey Marie Rupp, 4028 North Bonita, San Diego, CA 92114

(f) Rita Rupp, 3131 Central Avenue, Spring Valley,CA 92077

(g) Ted Taylor, Horton Drive, La Mesa, California 92041

(h) Rebecca Taylor, Horton Drive, La Mesa ,CA 92041